IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.7905 OF 2005

Sunil Yadu Yadav. ...Petitioner.
Vs.
Forest Officer, Patan & Ors. ...Respondents.

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Mr. M. S. Patankar for the Petitioner.
Mrs. M.P. Thakur, AGP for the Respondents.

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CORAM : KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.

March 20, 2006.

P.C. (Per Dr. D.Y. Chandrachud, J.) :

The Petitioner claims to be an agriculturist and it has been stated in the petition that the major portion of the area where his lands are situated falls in Taluka Patan, while some lands fall in Taluka Jawali and in Chiplun. On 1st June 2002, the Petitioner made an application to the Tahsildar Patan for permission to cut "Jungle trees" (as they have been described in the Petition) from his land bearing Survey No.292/3. A similar application was made to the Range Forest Officer on 4th March 2004. Permission was, however, refused on the ground that the lands and the trees fall within the radius of 10 km. from the Koyana Forest. Permission was refused in view of an order passed by the Nagpur Bench of

this Court in Writ Petition 1277 of 2000 (**Shobhatai Phadanwis vs. State of Maharashtra**). The Petitioner has drawn the attention of the Court to the subsequent clarificatory order passed by the Nagpur Bench on 16th February 2005 in Writ Petition 4711 of 2004 to the following effect :

> "This Court on 30.4.2004 and 8.10.2004 has passed orders in Writ Petition No.1277/2000 not to permit any felling of the trees within the radius of 10 KM from the boundaries of any reserved or protected forest. We make it clear that our order does not apply to non-forest private plantation and in case the applicants' Plantation is a non-forest area, there is no impediment on the part of the Forest Department or the Notified Tree Officer to permit them to fell trees from the Plantation done by them and the permission can be granted in accordance with the procedure for the said purpose."

2. An affidavit in reply has been filed in these proceedings by the Range Forest Officer, Patan, District Satara, in which it has been stated that the application of the Petitioner for permission to cut trees was rejected on the ground that the area is within a

distance of 10 km. of the boundaries of Koyana Wild Life Sanctuary and Chandoli National Park and having regard to the orders passed by the Nagpur Bench of this Court on 30th April 2004 in Writ Petition 1277 of 2000. It has been stated that under Section 3(1) of the Maharashtra Felling of Trees (Regulation) Act, 1964, prior permission in writing of the Tree Officer is required to fell any tree from any land. Instances were reported to the Patan Range of felling of trees on private land without permission of the Tree Officer. The Tree Officer has, therefore, taken necessary steps in accordance with law. In the affidavit, it has been further stated that the trees for which permission was sought had not been raised as plantation, but that they have naturally grown in the area. Hence, it has been submitted that for trees which are of natural growth, the order dated 30th April 2004 would govern. On behalf of the Petitioner, however, it has been submitted that the permission should have been granted since the trees in respect of which permission sought are not of a natural growth. This, in our view, is a pure question of fact upon which it would not be possible for this Court to enter any finding. At this stage, Counsel appearing on behalf of the Petitioner has stated that the Petitioner would file a fresh application for permission and in the event that such an

application is filed, directions may be issued to the authorities to consider the application in accordance with law.

3. Having regard to these circumstances, this petition can be disposed of in the light of the following directions:

-(i) The Petitioner is at liberty to file a fresh application before the Range Forest Officer; upon an application being filed, it would be open to the Range Forest Officer to get a survey conducted by the concerned Tahsildar and upon the receipt of the report of the Tahsildar, the Range Forest Officer shall pass appropriate orders in accordance with law having due regard to the clarificatory order dated 16th February 2005 issued by the Nagpur Bench of this Court.

-(ii) We clarify that we have not expressed any opinion on merits and that the Range Forest Officer in the event that an application is moved before him, shall deal with the application and decide the same in accordance with law.

4. The petition is disposed of in the aforesaid terms. No order as to costs.

CHIEF JUSTICE

Dr.D. Y. Chandrachud, J.